

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 2346 of 1983
Date of decision: 22.8.2007

Hazari and others

...Petitioners

Versus

Collector, Rohtak and others

...Respondents.

CORAM:- HON'BLE MR. JUSTICE K.S.GAREWAL

Present: Mr. S.C. Kapoor, Senior Advocate with
Mr. Harminderjit Singh, Advocate, for
for the petitioners.

Mr. Anil Rahtee, Additional Advocate General,
Haryana, for respondents No. 1 and 2.

Mr. R.S. Chahar, Advocate, for
respondent No.3.

K.S.GAREWAL, J.

Hazari and three others have filed this petition under Articles 226/227 of the Constitution of India to challenge the order of SDM dated September 21, 1981 (Annexure P/3) allowing the application of the Gram Panchayat Baliana under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the Act) and the order of the Collector dated April 12, 1982 (Annexure P/2) dismissing their appeal.

The petitioners' case is that the land measuring 47 kanals 19

marlas was owned and possessed by the proprietors of Baliana, the ancestors of the petitioners created a dohli of this land and delivered possession to a temple. The last Mahant of the temple was Baba Parkasha Nand. In 1963, Baba Parkasha Nand created a lease of the land in favour of the petitioners for a period of 5 years. Baba Parkasha Nand left the village and the dohli reverted to the proprietors but the petitioners continued to cultivate the land. The Panchayat filed an application under Section 7 of the Act on November 7, 1979 for eviction of the petitioners. The defence of the petitioners was that the Sarpanch had no right to file the application because the land in dispute was a dohli which had been given by the proprietors for charitable/religious purposes. dohlidar had no right to transfer the land in favour of any one, therefore, the alleged transfer in favour of the panchayat was collusive. When the dohli came to an end the land reverted to the original owners. The petitioners examined witnesses and produced documentary evidence in support of their case. The Assistant Collector Ist Grade came to the conclusion that the ownership of the land was of the panchayat because dohlidar Baba Parkasha Nand had made a statement in favour of the panchayat in the civil court and the suit had been decreed in favour of the Panchayat. Consequently, the petitioners had obtained the land in dispute from Baba Parkasha Nand on lease for five years in 1963. The lease created by dohlidar would come to an end on the termination of the dohli and the possession would become unauthorized. Even according to the Sharat Wazubal Arz, on termination of the dohli the land would revert to the owners.

In appeal, the petitioners reiterated their defence but did not succeed. It was held that from the jamabandi 1973-74 the Gram Panchayat

was owner of the land in dispute. The Civil Court had also upheld the ownership of the panchayat land. After the dohli had extinguished, the land vested in the panahcyat. Reference was made to the condition of dohli contained in Sharat Wazubal Arz which provided that on termination of the dohli the land would revert to the original owner.

The main contention of the learned counsel for the petitioners is that the dohlidar cannot alienate the dohli which is a death bed gift of land given to a Brahman. Nothing is known when the dohli was created in favour of the temple. There is no record to show as to who had made this gift but what is established is that Baba Parkasha Nand was a dohlidar. Therefore, he or his predecessors had received the dohli. A dohlidar as a donee of a gift cannot obviously sell, lease or mortgage the gift further because that would terminate the special nature of the gift that he had received. The dohli must revert to the original owner. Since the gift was made by the proprietors of the village, it must revert to the proprietors of the village and cannot go to the Gram Panchayat. It is obvious that the Gram Panchayat had no right to assert its ownership over the land which belonged to the original proprietors or the persons who had created the dohli in favour of Baba Parkasha Nand or his predecessors.

In view of the above, I hold that the authorities below had misread the evidence and mis-construed the provisions of law. They were required to find out who the original proprietors were, when the dohli was created and who were the persons whom the land stood reverted after extinguishment of dohli. The petitioners may be descendants of some of the original proprietors but may not be the sole descendants. Therefore, while the Gram Panchayat was not the owner of the property, its application

under Section 7 of the Act was wrongly accepted. Even the petitioners may not be the sole owners. The title to the land in dispute is required to be determined under Section 13-A of the Act. Until the title is determined, the petitioners shall continue to enjoy the possession as lessees but after title has been determined the petitioners would be required to vacate the property and also pay lease money for the period during which he enjoyed the possession, as determined by the Collector.

In view of the above position, the petition is accepted, the orders dated September 21, 1981 and April 12, 1982 Annexures P/3 and P/2 respectively are hereby set aside, leaving the authorities to determine the title under Section 13-A of the Act.

August 22, 2007
prem

(K.S. GAREWAL)
JUDGE